

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Marvin L. Boerboom

Serial No.: 10/821,406

Filed: April 9, 2004

For: PLANTS AND SEEDS OF CORN
VARIETY 1900429

Group Art Unit: 1638

Examiner: Bui, Phuong

Atty. Dkt. No.: DEKA:350US

CERTIFICATE OF ELECTRONIC TRANSMISSION
37 C.F.R. § 1.8

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office via EFS-Web on the date below:

July 25, 2007

Date

/Robert E. Hanson/

Robert E. Hanson

REQUEST FOR REFUND TO DEPOSIT ACCOUNT

Mail Stop 16 – Refund Branch

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

Applicant hereby submits this Request for Refund of the Notice of Appeal fee in the amount of \$500 filed on May 8, 2006. This Request is timely submitted pursuant to 37 C.F.R. §1.26(a) as it has been filed within two years from the date the fees for which the refund is requested were paid.

The refund is requested on the basis that Applicant's Appeal was rendered moot and not heard due to the Examiner's withdrawal of substantially all of the appealed rejections. Specifically, a final Office Action was issued by the Examiner on February 8, 2006 rejecting claims 1-24. In the final Office Action, claims 1-24 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite; claims 3, 18 and 23-24 were rejected under 35 U.S.C. §112, first

paragraph, as failing to comply with the written description requirement; claims 1-24 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement; and claims 23-24 were rejected under 35 U.S.C. §102 as being anticipated, or in the alternative under 35 U.S.C. §103 as being obvious.

In response to the final Office Action, Applicants submitted a Notice of Appeal and the aforementioned fee. After the submission of the Notice of Appeal, the Examiner withdrew substantially all of the rejections to the claims. Specifically, following a teleconference with Applicants, the Examiner mailed a Notice of Allowance on August 18, 2006 allowing claims 1-22, 25 and 26, with Examiner Amendments to claims 11, 16, and 19, to address indefiniteness issues, cancellation of claims 23-24 and addition of claims 25-26. Therefore, the enablement and written description rejections of claims 1-22 were withdrawn without hearing of the Appeal.

It was because of the Examiner's initial unwillingness to allow any of the claims and subsequent reversal of this position that Applicant's Notice of Appeal was necessary but was never heard.

Accordingly, the Commissioner is hereby requested to refund the Notice of Appeal and Appeal Brief fees pursuant to 37 C.F.R. § 1.26 by crediting Fulbright & Jaworski L.L.P. Account No. 50-1212/DEKA:350US in the amount of \$500.00.

Respectfully submitted,

/Robert E. Hanson/

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